

1     **Q:**     Please state your name, occupation, and place of business.

2     **A:**     My name is Douglas Duncan Meredith. I am employed by John Staurulakis, Inc. (JSI). JSI  
3             is a telecommunications consulting firm headquartered in Seabrook, Maryland. JSI  
4             provides regulatory and financial service consulting to more than two hundred Incumbent  
5             Local Exchange Carriers (ILECs) throughout the United States. Additionally, JSI  
6             provides consulting services for various competitive local exchange carriers (CLECs)  
7             providing local exchange services across the nation.

8  
9             At JSI, I am the Director of Economics and Policy. I am responsible for the assisting clients  
10            with development of policy pertaining to economics, pricing and regulatory affairs. I have  
11            been employed at JSI since 1995. Prior to my work at JSI I was an independent research  
12            economist in Washington D.C. In my employment at JSI, I assist clients in the development  
13            of policy and have participated in numerous proceedings for rural and non-rural telephone  
14            companies. These activities include developing policy related to the application of the rural  
15            safeguards for qualified local exchange carriers, the determination of eligible  
16            telecommunications carriers, and the sustainability and application of universal service  
17            policy for telecommunications carriers.

18  
19            As a former member of the national Rural Policy Research Institute (RUPRI)  
20            telecommunications panel, I assisted in developing policy recommendations for advancing  
21            universal service and telecommunications capabilities in rural communities.

22

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1  
2       Currently, I am a member of the universal service committee for Organization for the  
3       Promotion and Advancement of Small Telecommunications Companies (OPASTCO). Our  
4       committee was responsible for the creation of a recently published a white paper entitled  
5       Universal Service in Rural America: a Congressional Mandate at Risk. I have attached this  
6       white paper as Exhibit DDM-01.

7  
8       I have a Masters degree in economics from the University of Maryland - College Park. And  
9       I have completed all coursework and comprehensive and field examinations for my  
10      Doctorate of Economics at the University of Maryland.

11  
12   **Q:    Have you ever testified before this Commission in other proceedings?**

13   A:    Yes, I have testified before this Commission.

14  
15   **Q:    On whose behalf are you testifying in this proceeding?**

16   A:    I am testifying on behalf of the South Carolina Telephone Coalition. As list of coalition  
17      members is attached as Exhibit DDM-02.

18  
19      Each of the coalition members for whom I am testifying is a rural telephone company  
20      according to the definition in Section 153(37) of the Communications Act of 1934, as  
21      amended (Act) and is designated as an eligible telecommunications carrier (ETC).

1

2   **Q:**    What is the purpose of your testimony in this proceeding?

3    A:    The purpose of my testimony is to respond to issues raised by the Direct Testimony of  
4           Steve R. Mowery dated and filed in this proceeding on August 14, 2003.    I also  
5           recommend certain policies for the Commission to consider when determining whether a  
6           second ETC should be designated in areas served by rural telephone companies.

7

8   **Q:**    Please summarize your testimony.

9    A:    I recommend that ALLTEL Communications, Inc.'s (ALLTEL's) application for ETC  
10          designation for its Commercial Mobile Radio Service (CMRS) operations in areas served  
11          by rural telephone companies in the state of South Carolina be denied unless and until a  
12          more complete public interest showing can be made that takes into account both the  
13          public benefits and the public costs of granting ETC status to ALLTEL.

14

15          There are compelling reasons to deny the petition of ALLTEL to receive ETC status in  
16          study areas currently served by rural telephone carriers in South Carolina. My testimony  
17          reviews the requirements of ETC designation in rural areas and address how these  
18          standards are being addressed by regulators. The threshold question I address is whether  
19          ALLTEL has sufficiently addressed the public interest standard required for ETC  
20          designation in areas served by rural telephone companies in South Carolina. Based upon  
21          my review of the ALLTEL petition, ALLTEL's response to interrogatories, Mr.  
22          Mowery's Direct Testimony, and my review of related federal proceedings and

proceedings in other states, I recommend specific policies and principles for this Commission to consider when determining whether it is in the public interest to designate a second ETC in areas served by rural telephone companies.

Finally, in the event that the Commission determines that the public interest is served by designating ALLTEL as an ETC in areas served by rural telephone companies in the state, my testimony addresses certain policies for this Commission to consider adopting regarding the newly designated ETC.

**Q: What is the requirement to receive ETC designation?**

**A:** In Section 214 of the Act, Congress identified the minimum requirements a common carrier must meet to be designated an ETC. These minimum requirements are found in Section 214(c)(1) of the Act:

- a. offer the services that are supported by Federal universal service support mechanisms under section 254(c) of this title, either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and
- b. advertise the availability of such services and the charges therefore [*sic*] using media of general distribution.

**Q: What benefits do ETC-designated carriers receive?**

**A:** An ETC-designated common carrier shall be eligible to receive federal universal service support consistent with congressionally mandated universal service policies.

Q: Did Congress define the process for ETC designation?

A: Yes. The designation process applicable to South Carolina is found in §214(e)(2) of the Act.<sup>1</sup>

(2) Designation of eligible telecommunications carriers.

A State commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State commission. Upon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest. (Emphasis Supplied)

In this paragraph, Congress prescribes two tracks for ETC designation: non-rural and rural. My testimony addresses the rural designation process. For review, Congress requires State commissions to designate more than one common carrier as an ETC in areas served by non-rural telephone carriers. The process for areas served by non-rural telephone carriers does not require that state commissions consider the public interest in designating more than one ETC.<sup>2</sup>

<sup>1</sup> The Act also addresses designation of an ETC for unserved areas in §214(e)(3), and ETC designation where no state commission has jurisdiction §214(e)(6). Neither circumstance applies in the current proceeding.

<sup>2</sup> Certain non-rural ILECs argue that there is a public interest determination for non-rural areas as well. I will not address whether this interpretation is consistent with Congressional intent since my testimony addresses areas served by rural telephone companies.

1  
2 The process mandated by Congress for areas served by rural telephone companies is  
3 more involved. Congress requires that state commissions explicitly determine that the  
4 designation of more than one ETC for areas served by rural telephone carriers is in the  
5 public interest.

6  
7 **Q: What policy did Congress advance when it created two tracks for ETC designation?**

8 **A:** I believe it is important to observe that while seeking to promote competition in  
9 telecommunications services nationwide, Congress has determined that it may not be in  
10 the public interest to have more than one ETC designated in areas served by rural  
11 carriers. In order to designate a second ETC in these areas, Congress requires that an  
12 explicit determination be made by state commissions that a second ETC designation is in  
13 the public interest. (See §214(e)(2) of the Act)

14  
15 **Q: Isn't providing universal service support for competition in the telecommunications**  
16 **marketplace always in the public interest?**

17 **A:** No. The proposition that competition universally benefits all customers in all areas and  
18 thus all competitors should qualify for universal service support is not supported by  
19 congressional action. To reinforce this point, Congress passed several provisions in the  
20 Telecommunications Act of 1996 that identified the need to temper and in some instances  
21 forestall competition in areas served by rural carriers. (See §214(e)(2) and (e)(6), §251(f),  
22 and §253(f)) These provisions were enacted because Congress knew that in certain

1  
2 instances the results of a competitive market could run contrary to the public interest.

3 One reason why competition can be destructive rather than beneficial is due to the  
4 economic reality of large investments in plant and equipment for telecommunications  
5 service in sparsely populated areas. In these instances, the public interest has been best  
6 served by creating the largest critical mass of customers for one carrier; thereby creating  
7 the best economies of scale for rural areas. Pertaining to universal service support,  
8 Congress clearly prescribed a mechanism whereby competitive carriers must meet a  
9 public interest test prior to receiving universal service support for their networks in areas  
10 served by rural telephone companies.

11  
12 **Q: Does Mr. Mowery sponsor the proposition that competition is always in the public**  
13 **interest?**

14 **A:** Apparently yes. On pages 8-9 of his Direct Testimony, Mr. Mowery posits that (1)  
15 ALLTEL provides a competitive option for wireline service, that (2) competition is in the  
16 public interest, and therefore ALLTEL satisfies the public interest requirement expressed  
17 by Congress.

18  
19 ALLTEL's application is based entirely on vague generalities regarding the generic  
20 benefits of competition. There is no evidence that ALLTEL would serve any new areas  
21 beyond those that it currently serves, nor that ALLTEL would broaden its service

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offerings or reduce its prices if it were granted ETC status.<sup>3</sup> There is also no indication that approval of ETC status for ALLTEL would increase the level of competition in the marketplace or hasten the delivery of advanced services.

Finally, there is no discussion in ALLTEL's application of the public costs that would be incurred by providing high-cost support to ALLTEL for its existing CMRS customer base in South Carolina. Many comments filed in response to the Federal-State Joint Board on Universal Service Portability Proceeding,<sup>4</sup> explained that a meaningful public interest analysis must address both the benefits and costs of designating an additional ETC in a rural service area, and that such a designation should occur only when the public benefits from supporting multiple providers exceed the public costs created by supporting multiple networks.

**Q: In addressing ALLTEL's first claim (that ALLTEL provides a competitive option for wireline service), does ALLTEL's Commercial Mobile Radio Service provide a competitive option for wireline service in areas served by rural telephone companies?**

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<sup>3</sup> In its petition, ALLTEL describes a universal service offering for Lifeline customers but provides no details about universal service offerings for other end-user customers. Efforts to determine the exact universal service offering proposed by ALLTEL through interrogatory responses indicate ALLTEL seeks ETC designation for all CMRS end-user customers with billing addresses in South Carolina, irrespective of whether these customers pay on a pay-as-you-go at \$0.35 or \$0.50 per minute (pre-paid phone service) or over \$295.00 per month (total freedom phone service).

<sup>4</sup> *Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High-Cost Universal Service Support and the ETC Designation Process*, CC Docket No. 96-45, Public Notice, 18 FCC Rcd 1941 (2003).



1  
2 A: Experience suggests that CMRS is not a substitute for wireline service. Rather, CMRS is  
3 a complimentary service to wireline. The end-user customers do not generally substitute  
4 their ILEC phones for CMRS phones. Rather customers subscribe to CMRS service for  
5 mobility and for larger toll-free calling scope than they have currently with wireline  
6 service. For instance, customers who make large amounts of toll calls are attracted to the  
7 larger calling scope of CMRS service. Experience with this service shows that aside  
8 from the mobility component, CMRS service serves as a toll discount service. End-user  
9 customers retain their original ILEC service because there are inherent advantages of  
10 wireline service. For instance, system reliability and data transmission rates are far  
11 superior on wireline service.<sup>5</sup> For these and other reasons, end-user customers will likely  
12 subscribe to the CMRS service as a complimentary service to their existing wireline  
13 service.  
14  
15  
16  
17

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<sup>5</sup> During the August 2003 blackout in the northeast, many CMRS networks failed. As reported by Telecommunications Daily on August 25, 2003, Sen. Charles E. Schumer (D., N.Y.) released a statement that "blasted wireless carriers for what he called their poor performance during the power blackouts that hit New York in mid-August, saying that the failure of wireless phones now appeared far worse than previously thought." He stated that "Last week's blackout was a cell phone disaster." The Senator states that "Cell phone service got worse, not better, as the blackout continued, when thousands of cell phone towers and transmitters lost power because their battery backups only lasted from two to six hours." "Cell phone companies didn't have enough generators to recharge the batteries and found that recharging was an hours-long process for each of the thousands of cell phone transmitters in New York."

1  
2 **Q: ALLTEL claims it will bring competitive benefits to areas where they seek ETC**  
3 **designation. Do you agree?**

4 **A:** No. Upon review of Mr. Mowery's Direct Testimony, ALLTEL claims its is ready to  
5 bring the benefits of competition to consumers in South Carolina through benefits of  
6 consumer pricing, better service quality, and immediate service availability; however, the  
7 only tangible benefit that their service will bring to the market is the ability to provide a  
8 toll discount plan by offering a larger local calling scope. I submit that supporting a toll  
9 discount plan with universal service funds is not what federal universal service was  
10 intended for nor is it in the public interest.

11  
12 **Q: Will designating ALLTEL an ETC in areas served by rural carriers promote**  
13 **competition for universal services?**

14 **A:** No. I believe that ETC designation for ALLTEL will only promote arbitrage of federal  
15 universal service support. Upon receiving ETC designation, ALLTEL will have an  
16 incentive to seek out the highest per-line federal support study area and subscribe as  
17 many customers as it can to its service. In certain study areas in South Carolina, the  
18 federal universal service support funds such that on a per line basis ALLTEL could give  
19 their service to their existing customers for free using universal service support funds as  
20 its sole source of revenue. (See Exhibit DDM-03)<sup>6</sup> This practice is not in the public

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<sup>6</sup> A specific example from the Exhibit shows that ALLTEL's lowest priced "local freedom" service is \$29.95 per month (pre-paid service, which ALLTEL includes as one of its supported services, is also available at either \$0.50 or \$0.35 per minute). A projection of per line monthly federal support for certain study areas in South Carolina exceeds this amount.

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1  
 2 interest and can be prevented by denying its request for ETC designation in South  
 3 Carolina.

4  
 5 **Q:** Turning now to ALLTEL's second claim (that competition is in the public interest),  
 6 do you agree with Mr. Mowery that competition *per se* satisfies the public interest  
 7 standard?

8 **A:** No. The reasoning presented by Mr. Mowery is not what was envisioned by Congress.  
 9 In advancing the proposition that competition is always in the public interest, Mr.  
 10 Mowery creates an inconsistent view of Congressional policy.<sup>7</sup> Specifically, if Congress  
 11 believed that the introduction of competition was in the public interest in rural areas, then  
 12 Congress would not have included the public interest requirement in the statute at all.  
 13 Instead, Congress would simply have omitted the public interest requirement and any  
 14 competitor could become an ETC. Congress could have easily accomplished this  
 15 because this is the policy for areas served by non-rural carriers. Instead, Congress placed  
 16 an additional requirement on the designation of an additional ETC in areas served by  
 17

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<sup>7</sup> The United States Congress, *Telecommunications Act of 1996: Conference Report, 1-31-96* Joint Explanatory Statement of the Committee of Conference provides the following explanation of its intent for the ETC designation process: "Upon its own motion or upon request, a State commission is required under new section 214(e)(2) to designate a common carrier that meets the requirements of new section 214(e)(1) as an eligible telecommunications carrier. If more than one common carrier that meets the requirements of new section 214(e)(1) requests designation as an eligible telecommunications carrier in a particular area, the State commission shall, in the case of areas not served by a rural telephone company, designate all such carriers as eligible. If the area for which a second carrier requests designation as an eligible telecommunications carrier is served by a rural telephone company, then the State commission may only designate an additional carrier as an eligible telecommunications carrier if the State commission first determines that such additional designation is in the public interest."

1  
2 rural telephone companies. The public interest requirement is not met by the presence of  
3 a competitor competing in rural areas.  
4

5 **Q: Are you aware of the FCC determinations referenced by Mr. Mowery that suggest**  
6 **that the FCC believes that the mere existence of a competitor in a rural area**  
7 **satisfies the public interest?**

8 A: Yes. I am aware that the FCC has made determinations in the past along the lines  
9 suggested by Mr. Mowery. However, Mr. Mowery does not mention that the FCC  
10 directed the Joint-Board on Universal Service to open a proceeding to address whether its  
11 past determinations were consistent with the policies adopted by Congress. In the  
12 Portability Proceeding the Joint Board is addressing, among other things, whether it  
13 should adopt federal standards for the designation of ETCs for areas served by rural  
14 telephone companies and what public interest standard should be used by state  
15 commissions in their determinations.<sup>8</sup>  
16

17 Regardless of how the FCC or other state commissions have acted in the past, this  
18 Commission has a duty to apply the federal statute that is consistent with the policies  
19 envisioned by Congress. ALLTEL's interpretation of this statute creates an  
20 impermissible inconsistency because under its interpretation, the public interest standard  
21 is always satisfied. I believe that ALLTEL's interpretation of the policy advanced by

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<sup>8</sup> See footnote 4.

1  
2 Congress fails to address the requirement that regulators apply some limiting standard,  
3 rationally related to the goals of the Act in addressing the public interest.  
4

5 **Q: Does ALLTEL propose to introduce new competition into South Carolina?**

6 A: From the website maps of ALLTEL (Exhibit DDM-04), ALLTEL is already providing  
7 service coverage throughout the state. From ALLTEL's response to interrogatories  
8 number 1-2, there are only isolated cases where ALLTEL does not provide service  
9 throughout the state. From this evidence, it appears that ALLTEL is already competing  
10 in rural study areas throughout South Carolina -- not to mention other CMRS providers  
11 also competing throughout the state. Hence, any benefits to consumers that Mr. Mowery  
12 claims as part of ETC designation are already evident in the marketplace.  
13

14 **Q: Is it in the public interest to provide universal service support for a carrier that is**  
15 **already in the marketplace and has not accepted South Carolina carrier of last**  
16 **resort obligations?**

17 A: No. ALLTEL is a for-profit firm. ALLTEL's past actions suggest that it adopted a  
18 business and deployment plan in South Carolina that did not envision receipt of universal  
19 service support funds. I cannot currently imagine a scenario where it would be in the  
20 public interest to provide universal service support funds for a carrier that has voluntarily  
21 entered the marketplace and later seeks universal service support for existing operations  
22 without accepting South Carolina carrier of last resort (COLR) obligations.

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1  
2 Q: What is the public interest standard that you recommend to this Commission?

3 A: I recommend that this Commission use at minimum the recommendations I helped create  
4 that are in the OPASTCO white paper. Specifically, the Commission should examine  
5 whether the benefit of providing universal service support to ALLTEL exceeds the costs  
6 of such support.

7  
8 There are several additional policies that the Commission should adopt to standardize  
9 minimum qualifications to potential and existing ETCs in rural service areas:

10  
11 (1) the carrier must demonstrate its ability and willingness to provide all of the  
12 services supported by the federal universal service support throughout the entire  
13 rural telephone company service area.

14  
15 (2) in fulfilling the requirement to advertise its services and rates, an ETC must  
16 emphasize its universal service obligation to offer service to all consumers in the  
17 service area.

18  
19 (3) the carrier must have formal arrangements in place with the ILEC or other  
20 carrier to serve customers where they have yet to build facilities.

21  
22

1  
2 (4) the carrier must have a specific plan for building out its network, if necessary,  
3 once it receives ETC designation and must make demonstrative continuous  
4 progress toward achieving its build-out plan in order to retain ETC designation.

5  
6 (5) the ETC must offer a service offering accepted by the Commission that  
7 satisfies comparability and affordability.

8  
9 (6) a carrier must demonstrate that it is financially stable.

10  
11 (7) the carrier must adhere to the service quality standards, reporting requirements  
12 and customer billing requirements established by the Commission and that are at  
13 parity for ILECs.

14  
15 (8) the Commission should determine that each rural area market has the  
16 characteristics required to develop beneficial competition for universal services.  
17 This analysis should be conducted using all demographic and economic  
18 information available to the Commission.

19  
20 I believe it is important that the Commission recognize the *de facto* carrier of last resort  
21 (COLR) obligations of ILECs. Inasmuch as these COLR obligations are in addition to  
22 the minimum federal qualifications for ETC, I recommend in item (7) that this

Commission acknowledge that these duties are beyond minimum federal ETC requirements and when other public interest considerations are satisfied, consideration should be given to ensure that all ETCs carry the same COLR duties within the areas they serve.

**Q. Why is it important that the Commission carefully consider public interest issues before designating an additional ETC in a rural service area?**

A. If requests for designations as an ETC in rural areas are granted too liberally, the ETC support payments and overall size of the universal service support will increase at a rate that will not be sustainable.<sup>9</sup> All consumers of telecommunications services ultimately fund universal service support and there is a limit to how much they reasonably can and should be expected to pay.<sup>10</sup> Furthermore, to ensure that rural services are comparable to those in urban areas and are offered at comparable rates, investment in rural infrastructure

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<sup>9</sup> The FCC has expressed concern over the sustainability of the present support levels and contribution method in its Contribution Methodology Order. See *Federal-State Joint Board on Universal Service, 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size, Number Resource Optimization, Telephone Number Portability, Truth-in-Billing and Billing Format*, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952 (2002).

<sup>10</sup> In the event that ALLTEL becomes an ETC in South Carolina and thereafter becomes eligible for South Carolina universal service support funding, the consumers of South Carolina directly and exclusively bear the financial burden of a second ETC in a rural area drawing from the South Carolina Fund. In a similar ETC request in the state of Utah, the Public Service Commission denied the designation petition of Western Wireless because of public interest concerns over affordability of the state fund. This decision was upheld by the Utah Supreme Court. See *WWC Holding Co., Inc., Petitioner, v. Public Service Commission of Utah, Stephen F. Mecham, Clark D. Jones and Constance B. White, Commissioners of the Public Service Commission of Utah, Respondents*. IN THE SUPREME COURT OF THE STATE OF UTAH, No. 20000835, Filed March 5, 2002.



1  
2 needs to be encouraged, and universal service funding must be robust enough for this to  
3 occur. Otherwise, investment in the rural infrastructure will decrease along with the  
4 quality of service while rates paid by consumers will increase -- both outcomes are  
5 contrary to the purpose of the Act. Thus, this Commission should treat the universal  
6 service fund like a scarce resource, granting ETC status in rural areas only when the  
7 public interest is clearly benefited from an additional ETC in a rural area.  
8

9 If the Commission grants ALLTEL's application for South Carolina it will only serve to  
10 encourage additional CMRS providers, including other large national carriers, to apply as  
11 well. This is because once one CMRS provider obtains ETC status in a rural area, the  
12 other CMRS providers in the area will be compelled to seek ETC designation as well in  
13 order to remain competitive with each other.  
14

15 Such a large-scale increase in ETC designation requests will surely hasten the rapid  
16 escalation of the size of the federal support as predicted by OPASTCO and other  
17 parties.<sup>11</sup> In Exhibit DDM-01, OPASTCO estimated that if all CMRS providers  
18 nationwide were to apply for and receive ETC status, the annual funding level of the high  
19 cost support program would increase by approximately \$2 billion.<sup>12</sup> An increase of \$2

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<sup>11</sup> See, OPASTCO Comments in CC Docket No. 96-45 (filed May 5, 2003), pages 10-11, National Association of State Utility Consumer Advocates (NASUCA) Comments in CC Docket No. 96-45 (filed May 5, 2003), page 3.

<sup>12</sup> Exhibit DDM-01, Universal Service in Rural America: A Congressional Mandate at Risk, Stuart Polikoff, OPASTCO, January 2003, page 21.

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billion on top of the current \$3.4 billion for the entire federal support high-cost program would seriously compromise the continued ability of the federal support program to ensure the provision of affordable and "reasonably comparable" services and rates to consumers in the most remote regions of the nation.<sup>13</sup>

Additionally, a recent state example highlights another reason for this Commission to carefully review the ALLTEL petition. On July 22, 2003 the State Corporation Commission of the State of Kansas (Kansas Commission) staff filed a motion to reopen a 2002 ETC docket and determine whether ETC designation of Western Wireless (the petitioning CMRS carrier) should be revoked.<sup>14</sup> The Kansas Commission Staff contends that Western Wireless is taking an unlawful position, is receiving unauthorized federal universal service support, and that Western Wireless was "never given *carte blanche* authority by the Commission to self-determine which of its services were universal service offerings."<sup>15</sup> In order to avoid possible future misunderstandings, the Commission should carefully review the ALLTEL petition in this proceeding and examine the public policy and financial ramifications of ALLTEL's petition.

<sup>13</sup> Projected 4Q:2003 support for all carriers is \$3.4 billion. Projected 4Q:2003 support for CMRS providers amounts to \$243 million. (See Exhibit DDM-05)

<sup>14</sup> In the Matter of GCC License Corporation's Petition for Designation as an Eligible Telecommunications Carrier, Motion of Commission Staff to Reopen Docket to Clarify Order #11 and the Determine if ETC Designation of Western Wireless Should be Revoked, State Corporation Commission of the State of Kansas, Docket No. 99-GCCZ-156-ETC, July 22, 2003

<sup>15</sup> *Id.*, paragraph 12.

1  
2 Q: Are universal service issues now being considered by the FCC?

3 A: Yes. I mentioned previously that the Federal-State Joint Board on Universal Service is  
4 currently reviewing numerous competitive universal service issues, including the process  
5 for designating ETCs and the methodology for calculating support in competitive study  
6 areas in the Portability Proceeding. Comments and reply comments have been filed in  
7 this proceeding, and the Joint Board conducted a hearing on these issues on July 31,  
8 2003. It is quite possible that, as a result of this proceeding, there will be significant  
9 changes in the way in which competitive ETCs are designated, and in the level of support  
10 that they receive.

11  
12 Over the last several years, the FCC has been very active in restructuring basic  
13 components of the telecommunications industry. The FCC adopted a cost model  
14 methodology for non rural LECs in 1999. In addition, the FCC approved the CALLS  
15 plan for price cap LECs which at full implementation increases the maximum End-User  
16 Common Line (EUCL or Subscriber Line Charge (SLC)) charge to \$9.20 per line per  
17 month, lowers interstate access to a composite rate of approximately one cent per minute  
18 and creates an additional federal universal service support mechanism (Interstate Access  
19 Support).<sup>16</sup>

20  

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<sup>16</sup> In the Matter of Access Charge Reform, CC Docket No. 96-262, Sixth Report and Order, 15 FCC Rcd 12962 (2000)

The FCC also issued orders impacting rural ILECs. The Multi-Association Group (MAG) Order mirrored the EUCL rates of the price cap companies, moved large amounts of support out of traffic sensitive rates to common line rate elements and then, as with the price cap LECs, eliminated per minute common line access rates.<sup>17</sup>

It is important to note that all actions, when viewed from a broad perspective, consistently move to eliminate implicit support included in federal access rates and appear to be heading toward the elimination of usage sensitive interstate access rates. Taken as a whole, the actions all increase the necessity of federal universal service funding.

In addition to actions by the FCC, federal courts have also been active in interpreting federal statutes and FCC actions. One recent court action that the Commission should be especially mindful of is *Qwest Corp. v. FCC*.<sup>18</sup> In this opinion the court reversed and remanded the FCC's Ninth Report & Order on Universal Service.<sup>19</sup> The court held that the FCC had failed to provide an adequate showing that its federal universal service

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<sup>17</sup> *In the Matter of Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, Second Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 19613 (2001)

<sup>18</sup> *Qwest Corp. vs. FCC*, United States Court of Appeals, Tenth Circuit, 258 F.3d 1191 (2001).

<sup>19</sup> *In the Matter of Federal-State Joint Board on Universal Service*, Ninth Report & Order and Eighteenth Order on Reconsideration, Federal Communications Commission, 14 FCC Rcd 20432, FCC 99-306, CC Docket No. 96-45 (1999).

1  
2 support mechanism for non-rural LECs was sufficient, as required by the Act. According  
3 to the court, the FCC acknowledged that its federal mechanism would result in  
4 reasonably comparable rates only if the states implement their own universal service  
5 policies, yet did nothing to induce such state mechanisms. In remanding the matter back  
6 to the FCC, the court specifically required the FCC to create inducement for the states to  
7 support universal service. The court went on to suggest that "for example, the FCC  
8 might condition a state's receipt of federal funds upon the development of an adequate  
9 state fund." The court stated that federal law "plainly contemplates a partnership  
10 between federal and state governments to support universal service."  
11

12 **Q: If all CMRS providers became ETCs in South Carolina, what would be the impact**  
13 **on the FUSF?**

14 **A:** Based on the FCC's most recent Scope of Competition Report, there are approximately  
15 2,371,669 landline access lines in South Carolina. By comparison, there are 1,781,083  
16 wireless access lines in South Carolina. (See Exhibit DDM-06) According to the most  
17 recent quarterly report to the FCC submitted by the universal service administrator, South  
18 Carolina receives approximately \$86 million annually in federal support. (See Exhibit  
19 DDM-07) I have calculated that if all CMRS providers became ETCs in South Carolina,  
20 the federal support would increase to approximately \$150 million, approximately 175  
21 percent of its current size. Because all providers of interstate telecommunications  
22 services contribute to the fund, those providers would flow through such increases to  
23

1  
2 their end users, who ultimately are required to finance the federal support through  
3 surcharges on their bills.  
4

5 **Q: Should this Commission consider the overall impact on the federal support in**  
6 **granting additional ETC designation applications?**

7 A: Yes. In my opinion, the state commissions have a primary responsibility of ensuring that  
8 the distribution of both federal and state funds truly provides benefits to the public at  
9 large. Through the distribution of federal support, the Commission should expect the  
10 recipient to meet specific service quality and customer service commitments at reduced  
11 rates to all customers throughout any provider's service area.  
12

13 The Commission's actions in this proceeding will have a considerable impact on the  
14 overall impact of the federal universal service support. There is a longstanding line of  
15 economic literature that explores the concept of externalities. In this literature,  
16 economists explore the affect of small incremental actions by individuals on social  
17 outcomes. One of the more famous examples of this literature is called the "Tragedy of  
18 the Commons."<sup>20</sup> In this tragedy an undesirable outcome arises because individual  
19 villagers graze their cows on a common field. Because the villagers do not consider their  
20 impact on the society as a whole, each villager allows his cows to over-graze the common  
21 field and under-graze his private property. Another example of this principle is found in

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<sup>20</sup> G. Hardin, "The Tragedy of the Commons," Science, 1968, pp. 1243-47.

a New York Times report stating that "overfishing has decimated the stocks of cod, haddock and flounder that have sustained New Englanders for centuries."<sup>21</sup> The overfishing example highlights the problem of the tragedy of the commons: "Each fisherman has a negligible impact on the total stock of fish, but the accumulated efforts of thousands of fishermen results in serious depletion."<sup>22</sup>

This Commission's action in this proceeding will have an accumulated affect on the federal universal service fund, as well as a direct affect on the South Carolina universal service fund when additional ETCs are allowed to receive South Carolina universal service funds.

**Q: Is the Commission prohibited from adding additional obligations to ETC designated carriers?**

**A:** No. Initially, the FCC ruled that "a state commission may not impose additional eligibility requirements on a carrier seeking universal service support in non-rural service areas."<sup>23</sup>

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<sup>21</sup> "Plenty of Fish in the Sea? Not Anymore," *New York Times*, March 23, 1992, page A-15.

<sup>22</sup> Intermediate Microeconomics, A Modern Approach, Third Edition, Hal R. Varian, 1993, page 562.

<sup>23</sup> *Texas Office of Public Utility Counsel; Celpage, Inc., Petitioners, et al., v. Federal Communications Commission and United States of America, Respondents*, U.S. Court of Appeals, Fifth Circuit, July 30, 1999, No. 97-60421.

1  
2 In July 1999, the U.S. Court of Appeals, Fifth Circuit overturned the FCC rules that  
3 restrict state commissions to the minimum requirements for ETC designation of common  
4 carriers. In this decision the court said that:

5 “The FCC erred in prohibiting the states from imposing additional eligibility  
6 requirements on carriers otherwise eligible to receive federal universal service  
7 support. The plain language of the statute speaks to the question of how many  
8 carriers a state commission may designate, but nothing in the subsection prohibits  
9 the states from imposing their own eligibility requirements. This reading makes  
10 sense in light of the states’ historical role in ensuring service quality standards for  
11 local service. Therefore, we reverse that portion of the Order prohibiting the states  
12 from imposing any additional requirements when designating carriers as eligible  
13 for federal universal service support.”<sup>24</sup>  
14

15 A recent decision in the state of Vermont for a CMRS provider seeking ETC designation  
16 in non-rural areas of Vermont, concisely reviews the authority state commissions have to  
17 impose additional requirements on ETC designees. The Vermont Public Service Board  
18 correctly determined that the nearly automatic certifications in other states and at the  
19 FCC are not controlling in Vermont, and that the Vermont Board has the duty to apply  
20 the statute correctly. Regarding additional requirements, the Vermont for instance  
21 requires that a CMRS provider offer price discounts for the hearing impaired, establish a  
22 basic rate for purposes of disconnection policies, adhere to the Vermont Board’s  
23 consumer deposit policy. These additional regulations on a CMRS provider are  
24 noteworthy because they touch on but do not violate the rate and entry regulation  
25 prohibitions found in the Act. The Vermont Board concludes its actions are fully  
26 consistent with the regulation of additional terms and conditions afforded state

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<sup>24</sup>

*Id.*



1  
2 commissions by the Act. In addition to price related regulations, the Vermont Public  
3 Board imposed additional conditions on the ETC including going-forward coverage  
4 requirements and the periodic filing of financial information for state commission  
5 review.<sup>25</sup>

6  
7 **Q: What general public policy objectives do you recommend that this Commission**  
8 **consider?**

9 **A:** Consistent with the purposes of the Act, public policy should favor the development of  
10 constructive telecommunications competition in South Carolina. Competition that best  
11 serves consumers of telecommunications services is competition that is based on sound  
12 policy that is technology neutral and carrier neutral. That means that no carrier should  
13 have a regulatory treatment that differs in scope and intensity as compared with other  
14 similarly situated carriers. A sound competitive policy requires that all competitors are on  
15 a level playing field, especially when the carriers are designated as ETCs. Failure to have  
16 equivalent obligations distorts competition by giving the benefiting carrier an unequal  
17 advantage.

18  
19 I emphasize that it is necessary to place equivalent regulatory obligations required of  
20 ILECs on ALLTEL in conjunction with its pursuit of ETC designation in South Carolina.

21 In the current proceedings, imposing equal regulatory obligations on all carriers

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<sup>25</sup> *In re: Designation of Eligible Telecommunications Carriers Under the Telecommunications Act of 1996 (In re: RCC Atlantic, Inc. d/b/a Unicel)*, STATE OF VERMONT PUBLIC SERVICE BOARD, Docket No. 5918 (2003).

designated as ETCs in areas served by rural ILECs is fully consistent with the Congressional mandates and FCC policies as interpreted by the U.S. Court of Appeals.

As discussed by the FCC in a decision last summer regarding the Western Wireless universal service offering in Kansas, the FCC twice affirmed the powers retained by state commissions:

Pursuant to section 332(c)(3), state or local governments may not, with very limited exceptions, regulate the entry of or the rates charged by CMRS providers. States may, however, regulate other terms and conditions of CMRS, such as customer billing practices and consumer protection requirements. States may also impose on CMRS providers requirements related to universal service, although such requirements may not constitute rate or entry regulation. In addition, a CMRS provider may not be required to provide equal access to common carriers for the provision of telephone toll services.<sup>26</sup> (Emphasis supplied)

Pursuant to section 332(c)(3)(A) [of the Act], states may not regulate the entry or rates of CMRS providers. Thus states are prohibited from requiring CMRS providers to obtain a certificate of public convenience and necessity or regulating CMRS rates. In addition, states are precluded from requiring CMRS providers to provide equal access to common carriers for the provision of telephone toll services. States may, however, regulate other terms and conditions of CMRS.<sup>27</sup> (Emphasis supplied)

<sup>26</sup> *In the Matter of Petition of the State Independent Alliance and the Independent Telecommunications Group for a Declaratory Ruling that the Basic Universal Service Offering Provided by Western Wireless in Kansas is Subject to Regulation as Local Exchange Service*, WT Docket No. 00-239, Memorandum Opinion and Order, FCC 02-164, ¶ 6, footnotes omitted (rel. August 2, 2002). See also *Connecticut Department of Public Utility Control v. FCC*, 78 F.3d 842 (2d Cir. 1996).

<sup>27</sup> *Id.*, ¶ 30.

1  
2 Under Section 253(b) of the Act, the Commission is permitted ability to impose “on a  
3 competitively neutral basis” ETC obligations, with the limited exception of the  
4 preempted rate regulation, entry regulation, and equal access requirement for CMRS  
5 providers provided under Section 332 of the Act. In regard to the universal service  
6 obligations, the FCC has defined competitive neutrality as requiring “that universal  
7 service support mechanisms and rules neither unfairly advantage nor disadvantage one  
8 provider over another, and neither unfairly favor nor disfavor one technology over  
9 another.”<sup>28</sup>  
10

11 **Q: Does the FCC require ETCs to provide unlimited local usage as a “core” service for**  
12 **ETC designation?**

13 **A:** No. However, the FCC recently addressed unlimited local usage and clearly permits  
14 states to impose this requirement on all ETCs in a competitively neutral manner. The  
15 stated reason the FCC did not add unlimited local usage to the list of “core” services was  
16 because the FCC believed that such a requirement would preclude states from  
17 experimenting with local metered service offerings. Nevertheless, as stated by the FCC  
18 in this decision regarding “core” universal services, “states are in a better position to  
19 determine whether unlimited local usage offerings are beneficial in particular  
20

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<sup>28</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, FCC 97-157, at ¶ 47, (rel. May 8, 1997).

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1  
2 circumstances.”<sup>29</sup> While ALLTEL may argue that it has no obligation to provide  
3 unlimited local usage, the Commission clearly has the authority to impose an unlimited  
4 local usage requirement on ALLTEL for its ETC CMRS service offering, provided it  
5 does so on a competitively neutral basis for all ETCs.  
6

7 **Q: Does every ETC provide a flat rate unlimited local usage retail service throughout**  
8 **its designated ETC service area?**

9 A: Yes. In addition to flat rated unlimited local usage provided by all ETCs, this  
10 Commission has expanded unlimited local usage areas by mandating the creation of  
11 unlimited local usage areas for carriers with neighboring telephone companies.  
12

13 **Q: Does this end your pre-filed Direct Testimony?**

14 A: Yes.

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<sup>29</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order and Order on Reconsideration, FCC 03-170, at ¶ 14, (rel. July 14, 2003).